

## **EXHIBIT L**

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December 27, 2017

VIA ECF AND EMAIL

Honorable Stuart M. Bernstein  
 United States Bankruptcy Court  
 Southern District of New York  
 One Bowling Green, Room 723  
 New York, New York 10004-1408  
 bernstein.chambers@nysb.uscourts.gov

Re: *Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)*

Dear Judge Bernstein:

On behalf of BNP Paribas S.A., BNP Paribas Arbitrage SNC, BNP Paribas Securities Services S.A., and BNP Paribas Bank & Trust (Cayman) Limited (collectively, the “BNPP Defendants”), we write in response to the Trustee’s letter dated December 21, 2017 requesting an informal conference so that the Court may consider directing the BNPP Defendants to meet and confer with the Trustee regarding the scope and timing of discovery under Federal Rule of Bankruptcy Procedure 7026 and Federal Rule of Civil Procedure 26(f), and setting a date for a scheduling conference under Federal Rule of Bankruptcy Procedure 7016 and Federal Rule of Civil Procedure 16 (the “December 21 Letter”). The BNPP Defendants intend to file a motion to stay discovery in short order, which will explain why the Trustee’s request for discovery is premature at this time. Thus, we ask the Court to refrain from scheduling an informal conference concerning this matter until the motion to stay discovery is briefed.

Under the applicable legal standards, discovery should be stayed if there is “good cause” to do so. Fed. R. Civ. P. 26(c)(1); Fed. R. Bankr. P. 7026. As we articulated in correspondence with the Trustee’s counsel, in the instant case there exists “good cause” to

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postpone discovery until after the Court has resolved the BNPP Defendants' recently filed motion to dismiss, which will be fully briefed and before the Court by January 19, 2018 (the "Motion").

The Motion raises several dispositive defenses, including: (1) the absence of allegations of actual knowledge, which the Trustee does not dispute; (2) the insufficiency of the Trustee's allegations of willful blindness against the BNPP Defendants; (3) the application of the Section 546(e) safe harbor under the U.S. Bankruptcy Code; (4) the expiration of the statute of limitations on various claims; and (5) lack of personal jurisdiction over the BNPP Defendants. The BNPP Defendants believe that these arguments are strong, will result in the dismissal of all claims remaining in the action, and are thus more than sufficient to stay discovery. *See Boelter v. Hearst Commc'nns, Inc.*, No. 15 CIV. 03934 (AT), 2016 WL 361554, at \*5 (S.D.N.Y. Jan. 28, 2016) (granting a discovery stay because "none [of the defendant's arguments] are frivolous" and "succeeding on each argument alone may warrant dismissal"); *Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94 CIV. 2120, 1996 WL 101277, at \*4–5 (S.D.N.Y. Mar. 7, 1996) (granting a stay because pending motion to dismiss was "not unfounded in the law" and "appears to have substantial grounds.").

In addition to the strength of the Motion, a finding that good cause exists is especially warranted where, as here, the "breadth of discovery sought" is vast and the "prejudice that would result" from a stay is minimal. *Hong Leong Finance Ltd. (Singapore) v. Pinnacle Performance Ltd.*, 297 F.R.D. 69, 72 (S.D.N.Y. 2013). The Trustee's broad and numerous requests seek documents spanning over two decades, including regarding Madoff-related feeder funds that are not even at issue in the action, and the Trustee has not articulated how he would be prejudiced if discovery does not begin before the Motion is heard. Under these circumstances, discovery should not proceed.

We were hopeful that the Trustee would suspend his request for discovery until after the Court rules on the Motion, in light of the considerable burden and costs that discovery would impose on the BNPP Defendants, which would be rendered unnecessary by the dismissal of the action, and the lack of prejudice to him if discovery commenced a few months later. Nevertheless, the Trustee insists on pushing for discovery now. As a result, the BNPP Defendants intend to file a motion for a discovery stay so that the Court may resolve this matter.

Sincerely,

/s/ Ari D. MacKinnon  
Ari D. MacKinnon

cc: Jonathan A. Forman  
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Joanna F. Wasick  
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